

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS W. SAWYER,

Petitioner,

v.

CIVIL CASE NO. 10-11907
HONORABLE AVERN COHN

THOMAS BELL,

Respondent.

_____ /

**ORDER TRANSFERRING PETITION TO THE
COURT OF APPEALS FOR THE SIXTH CIRCUIT
AS A SECOND OR SUCCESSIVE PETITION**

I.

This is a habeas case under 28 U.S.C. § 2254. The petition challenges Sawyer's 1992 Ingham County convictions for first-degree criminal sexual conduct, kidnapping, and felony firearm. Petitioner was sentenced to two years in prison for the felony firearm conviction, followed by concurrent terms of twenty-five to fifty years in prison for the criminal sexual conduct conviction and life imprisonment for the kidnapping conviction. The Michigan Court of Appeals affirmed Petitioner's convictions, see People v. Sawyer, 564 N.W.2d 62 (Mich. Ct. App. 1997), and on January 30, 1998, the Michigan Supreme Court denied leave to appeal, see People v. Sawyer, 573 N.W.2d 624 (Mich. 1998) (table).

Petitioner subsequently challenged the same convictions in a federal habeas corpus petition. United States District Judge Richard A. Enslen dismissed the petition with prejudice. See Sawyer v. Stovall, No. 1:98-cv-00166 (W.D. Mich. Jan. 8, 2001).

On August 9, 2002, the United States Court of Appeals for the Sixth Circuit affirmed. See Sawyer v. Hofbauer, 299 F.3d 605 (6th Cir. 2002).

Petitioner pursued additional post-conviction remedies in state court without success. He filed the pending habeas petition on May 12, 2010. He alleges that (1) the police failed to disclose evidence, (2) the chief investigator obstructed justice by showing distorted surveillance photographs to the jury to demonstrate that Petitioner altered his appearance, and (3) trial counsel was ineffective.

II.

An individual seeking to file a second or successive habeas petition must first ask the appropriate court of appeals for an order authorizing the district court to consider the petition. See 28 U.S.C. § 2244(b)(3)(A); Stewart v. Martinez-Villareal, 523 U.S. 637, 641 (1998). When a habeas petitioner files a second or successive petition for habeas corpus relief in the district court without preauthorization from the Court of Appeals, the district court must transfer the case to the Court of Appeals pursuant to 28 U.S.C. § 1631.¹ Sims v. Terbush, 111 F.3d 45, 47 (6th Cir. 1997).

¹ Section 1631 provides in pertinent part that:

[w]henever a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action . . . to any other such court in which the action . . . could have been brought at the time it was filed . . . , and the action . . . shall proceed as if it had been filed in . . . the court to which it is transferred on the date upon which it was actually filed in . . . the court from which it was transferred.

III.

Petitioner has not acquired authorization from the Court of Appeals to file another habeas petition challenging the same convictions. Accordingly, the Clerk of Court shall TRANSFER this case to the Court of Appeals as a second or successive petition.

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: June 23, 2010

I hereby certify that a copy of the foregoing document was mailed to Thomas Sawyer, 224964, Gus Harrison Correctional Facility, Central Complex, 2727 E. Beecher Street Adrian, MI 49221 on this date, June 23, 2010, by electronic and/or ordinary mail.

S/Julie Owens
Case Manager, (313) 234-5160